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Written statement* submitted by the Amuta for NGO Responsibility, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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New Report on the 2014 Gaza Conflict Highlights Deficiencies in UN Fact Finding Mechanisms

NGO Monitor, a project of the Amuta for NGO Responsibility, and UN Watch have prepared an independent, fully sourced, systematic, and detailed report on issues related to the 2014 Israel-Hamas conflict, in parallel to the report of the UN Human Rights Council's Commission of Inquiry on Gaza (the "COI" or "Commission"). The aim of this report is to provide missing context and cover issues that are likely to be minimized or ignored altogether in the report of the Gaza COI, but that are critical to understanding and analyzing the 2014 war. The full report is available at www.ngo-monitor.org/2014_Gaza_Conflict.pdf.

In the past 13 years, the United Nations Human Rights Council and its predecessor framework – the UN Commission on Human Rights – have created at least seven commissions of inquiry regarding the Arab-Israeli conflict, more commissions than have been formed for any other conflict. All of these commissions have been mandated to investigate alleged Israeli wrongdoing; none have focused on wrongdoing by Arab states or terrorist groups in conflict with Israel. In all cases, the mandates were openly biased, and each of the reports – 2002 (Jenin), 2006 (Lebanon), 2008 (Beit Hanoun), 2009 (the Goldstone report), 2010 (Flotilla), and 2012 (settlements) – was surrounded by substantial criticism and controversy related to bias, omissions, inaccuracy, secrecy, questionable staffing, and sourcing, and the absence of systematic fact-finding methodology and standards.

The newest UNHRC commission was established on July 23, 2014 under Resolution S-21/1, passed during a special session of the UNHRC, in the midst of a 50-day conflict. During the conflict, Palestinian terrorist groups based in Gaza, under the control of the Hamas terrorist organization, launched thousands of deliberate attacks on Israel's civilian population. Yet, the Resolution "deplore[d] Israeli military operations" but not Hamas's attacks on civilians, and accused Israel, but not Hamas of "gross violations" of international law. The Resolution mandated the creation of a commission "to establish the facts and circumstances of such violations, … to make recommendations, in particular on accountability measures … and to report to the Council at its twenty-eighth session." The scheduled date for release of the report was March 23, 2015.

On August 11, 2014, Ambassador Baudelaire Ndong Ella, President of the Human Rights Council, announced the appointment of William Schabas to chair the Commission, despite (or, more likely, in consequence of) his long history of anti-Israel activism and prejudicial statements made about Israel and its leadership. On February 2, 2015, with the Commission having "largely completed the task of gathering material" and beginning "work on the drafting of the report," Schabas resigned when the Bureau of the Human Rights Council requested a legal opinion from UN headquarters regarding a previously undisclosed conflict of interest created by Schabas' prior paid work on behalf of the Palestine Liberation Organization. On February 3, Mary McGowan Davis, already a member of the Commission, was appointed chair, and the UN announced that the Commission would still present its report according to the original schedule. Given the time frame, it was practically impossible for the new chair to alter the investigative agenda already set by Schabas.

On March 9, 2015, just two weeks before the COI's report was to be presented to the Council, McGowan Davis requested a delay in presenting the report. Instead, on March 23, she provided an update of the COI's work to the UNHRC, and the Council voted to delay presentation of the report to the body's June 2015 session.

Despite indications that under McGowan Davis' leadership the COI has interviewed additional witnesses and taken a broader look at source materials than it had under Schabas' tainted management, the Commission's work nonetheless remains clouded in secrecy. The evidence being considered by the COI has not been released to the public, the deliberations of the Commission are tightly sealed, the identities of staff members are hidden, and allocation of work between Commission members and staff is unknown. Moreover, past UNHRC reports can be used to predict the results, and suggest that the primary emphasis of the report will focus on unverifiable and false allegations against Israel premised on bad sourcing and a fundamental misunderstanding of military operations and the laws of armed conflict. The factual narrative adopted by the report will rely, in the main, on work by a variety of anti-Israel NGOs (only partially acknowledged), and it will reflect the narrative of Israel's foes, primarily Hamas.

The factual narrative will not be supported by sufficient evidence to enable objective third parties to reach similar conclusions; indeed, in many cases, the factual narrative will be disproved by subsequently presented evidence. Nonetheless, the report will accuse Israel of numerous war crimes and crimes against humanity based on this shaky evidentiary foundation and tendentious and erroneous readings of the relevant law. Token acknowledgement of one or two of Hamas's crimes — most likely related to the indiscriminate firing of rockets against Israeli civilians — will appear in the report to create the appearance of balance. The report will avoid recognizing the relevance of international law concerning terrorism, and it will refrain from acknowledging that Hamas is a terrorist organization.

As independent scholars and researchers who have examined previous UNHRC reports in detail, we decided to conduct our own investigation focusing on some of the central issues related to the conflict, international law and human rights. Lacking the substantial budget and personnel at the disposal of UNHRC, we limited our investigation to a small number of issues likely to receive inadequate treatment in the COI report.

In preparing this report, we are aware of the extreme complexities in discerning the facts in the context of urban warfare. We are keenly cognizant of the difficulty in ascertaining the truth when faced with contradictory versions of events, particularly when little or no forensic or documentary evidence is revealed to the public. When even the identity of casualties (combatant or civilian) is hotly disputed, it is difficult to make definitive judgments concerning such issues as military necessity and proportionality. As has been demonstrated conclusively in analysis of past publications, particularly in the case of the Goldstone Report, it is not possible within the compressed time frame of a few months to properly investigate incidents related to combat in Gaza. In nearly all cases, little or no direct evidence is available to non-party investigators regarding the events. The evidence at the disposal of non-party investigators is often based on the testimony of residents and partisans and is highly problematic (whether gathered by partisan non-government organizations, journalists, or officials of UN commissions) and of questionable verity.

Therefore, our publication does not attempt to provide a definitive analysis of the incidents during the 2014 combat. Instead, we focus on a number of central dimensions related to international law and human rights that are essential to understanding the context and combat. These dimensions are:

1) The production and import of rockets and missiles, which were then launched from Gaza into Israel. In the period since 2001, more than 20,000 projectiles have been launched from Gaza, targeting the Israeli civilian population in a gradually increasing area. The import, production, storage (in densely populated civilian areas), and launch of these weapons clearly and repeatedly violate international law.

2) The sources of Hamas financing in light of international law forbidding the provision of assistance to terror organizations. We examine the internal and external funding mechanisms of Hamas, with a particular emphasis on states that provide financial, military, and material support – specifically Syria, Iran, and, after 2012, Qatar and Turkey.

3) The evidence regarding the abuse of humanitarian aid provided by different sources – international agencies, individual governmental, and non-governmental aid groups – to Gaza; the diversion of the aid for military and terror purposes; questions of supervision and accountability by the aid providers; and the international law implications of the diversion of aid; and

4) The credibility of reports and allegations from non-governmental organizations regarding the 2014 conflict.

On the basis of the detailed research presented in these chapters, we offer the following conclusions:

The continued failure by HRC fact-finding mechanisms to employ clear benchmarks for ethical standards, as well as the lack of adherence to the principles of objectivity, non-selectivity, balance, and universality, are among the reasons for the HRC's unsuccessful first eight years and the sweeping criticism of the Goldstone mission, among other initiatives. In some cases, their findings and conclusions have contributed to civilian harm, bolstering the impunity of groups like ISIS, the Taliban, Hamas, Hezbollah, and Boko Haram.

At a minimum, and in order to avoid the gross failures of the past, future UN commissions of inquiry must adopt and strictly adhere to internationally-accepted fact-finding standards, in particular the principles of impartiality and objectivity. They must be fully transparent in all methods of their work including, identifying staffers and

consultants, adopting standards governing third-party interactions, and implementing public guidelines as to how the credibility and factual claims of third-parties will be assessed. In their work on the Arab-Israeli conflict, they must move beyond the simplistic narrative of sole Palestinian victimhood and complete Israeli wrong-doing. They must end their practice of one-sided mandates and examine the motivations and actions of Hamas and other Palestinian armed groups, as well as their supporters and funders.

Without implementing these key reforms, UN fact-finding mechanisms will continue to be viewed as politicized exercises of little relevance.